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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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January 31, 2001

VIA HAND DELIVERY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W. – Room TW-B204
Washington, D.C. 20554

Re: FCC License No. IVMO88B
License Grant Date 02/28/95
Request for Relief Under FCC
Action In WT Docket No. 98-169

Dear Ms. Roman Salas:

On December 13, 2000, the Commission released its *Second Order on Reconsideration* in WT Docket No. 98-169, which set today as the date for elections in the 218-219 MHZ Service (formerly known as the Interactive Video and Data Service ("IVDS")). Accordingly, at this time, it is necessary that the Commission implement its actions in that proceeding in a manner consistent with the equal protection and due process requirements of the Constitution and the Administrative Procedure Act ("APA").

Harford SMR, Inc. ("Harford") was a participant in the FCC auction for IVDS licenses, was granted the above-numbered license, and made payments to the Commission totaling $64,089.47. These payments included down payments of $52,000 against a high bid amount of $260,000, representing a down payment of 20%, and four installment payments totaling $12,089.47.

In WT Docket No. 98-169, the Commission changed the calculation of required payments for the IVDS licenses to comply with the Supreme Court's decisions in *Adarand Constructors v. Pena* and *United States v. Virginia.* Specifically, since the record was insufficient to support the 25% bidding credit that had been granted based on racial and gender classifications, the

Commission eliminated that credit for minority- and women-owned businesses and, instead, determined to grant a 25% bidding credit to the accounts of every winning bidder in the 1994 auction that met the small business qualifications.

However, absent approval of the relief requested herein, the Commission's action continues to result in two classes of IVDS licensees that have been treated differently on the basis of race and gender and the requirements of *Adarand, Virginia,* and the APA will still be violated. In one class are the minority and female licensees who were able to decide whether to continue to make installment payments and whether to submit grace requests based upon notice and knowledge of the actual state of their licenses. In the other class are non-minority, non-female licensees who had to make those decisions without such notice and in the dark.

This discrepancy is clearly illustrated in Harford's case. After paying the $64,089.47 described above, Harford confronted two decisions: (1) whether to continue making installment payments and (2) whether to submit a grace period request. At the applicable times, the business realities of Harford's situation were that it had paid $64,089.47 against a principal obligation of $260,000 (24.6%) and against a combined principal and interest obligation of $311,770.90 ($260,000 principal plus $51,770.90 Finance Interest Amount), a payment equal to 20.6% of the total amount due. In that circumstance, with such large amounts of principal and interest still due for a license in an industry that had no business prospects, Harford made a business decision not to make or suspend further installment payments.

In the case of a minority or female licensee, an identical bid created completely different options. With the additional 25% bidding credit allowed to such licensees, the principal obligation of $260,000 would be reduced to $195,000; the $64,089.47 payment would represent 33% of the principal; and the combined principal and interest obligation remaining would be much lower due to the smaller amount of interest accruing on the smaller principal balance. In that circumstance, the business realities are much different; with one-third of the principal already paid and a smaller balance due, the decisions to continue making installment payments or to suspend such payments through a grace request are far more viable.

Accordingly, in light of the action in WT Docket No. 98-169, Harford's actual down payment should have been $39,000 (20% x $195,000) instead of $52,000, and Harford was compelled to make dispositive business decisions based on circumstances that differed from those of similarly situated licensees based solely on race and gender. Thus, to implement WT Docket No. 98-169 consistently with *Adarand, Virginia,* and 5 U.S.C. §553(d), the Commission should take the following actions:

1. In determining the amount of refunds to be made to Ineligible licensees and Eligible licensees who elect Amnesty, the amount of down payments made should be adjusted to reflect

the down payments required in light of the additional 25% credit granted to small businesses, and the amount of excess down payments made should be deemed an addition to the installment payments made and refunded to the licensee. In Harford's case, this means that $39,000 rather than $52,000 is the down payment made, and of the total $64,089.47 paid, $25,089.47 ($64,089.47 - $39,000.00) should be refunded.

2. Ineligible licensees should receive the opportunity to attain Eligible status by making the reduced payments that would have been due had notice of the additional small business credit been given prior to due dates for such payments.

Please contact the undersigned with any questions and regarding the disposition of this submission.

Respectfully submitted,

Michael A. Batte
President